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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Robert O'Neil,

Plaintiff,

v.

Latido Mitu Holdings, LLC,

Defendant.

Case No:

COMPLAINT FOR:

**Copyright Infringement under 17
U.S.C § 501**

DEMAND FOR JURY TRIAL

Plaintiff Robert O'Neil ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against Defendant Latido Mitu Holdings, LLC ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §501.

2. Plaintiff created a photograph of former celebrity couple Camila Cabello and Shawn Mendes walking while holding hands (the "Photograph") in which Plaintiff owns the rights and licenses for various uses including online and print publications.

1 3. Defendant owns and operates a website at domain wearemitu.com (the
2 “Website”).

3 4. Defendant, without permission or authorization from Plaintiff, actively
4 copied and/or displayed the Photograph on the Website and engaged in this
5 misconduct knowingly and in violation of the United States copyright laws.

6 **PARTIES**

7 5. Plaintiff Robert O'Neil is an individual who is a citizen of the State of
8 New York and maintains a principal place of business in Queens County, New York.

9 6. Upon information and belief, Defendant Latido Mitu Holdings, LLC, is
10 a California limited liability company with a principal place of business at 4712
11 Admiralty Way, Marina Del Rey in Los angeles County, California.

12 **JURISDICTION AND VENUE**

13 7. This Court has subject matter jurisdiction over the federal copyright
14 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

15 8. This Court has personal jurisdiction over Defendant because it
16 maintains its principal place of business in California.

17 9. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
18 business in this Judicial District and/or because a substantial part of the events or
19 omissions giving rise to the claim occurred in this Judicial District.

20 **FACTS COMMON TO ALL CLAIMS**

21 **A. Plaintiff's Copyright Ownership**

22 10. Plaintiff is a professional photographer by trade who is the legal and
23 rightful owner of certain photographs which Plaintiff commercially licenses.

24 11. Plaintiff has invested significant time and money in building Plaintiff's
25 photograph portfolio.

26 12. Plaintiff has obtained active and valid copyright registrations from the
27 United States Copyright Office (the “USCO”) which cover many of Plaintiff's
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1 photographs while many others are the subject of pending copyright applications.

2 13. Plaintiff's photographs are original, creative works in which Plaintiff
3 owns protectable copyright interests.

4 14. On March 31, 2020, Plaintiff authored the Photograph. A copy of the
5 Photograph is attached hereto as Exhibit 1.

6 15. In creating the Photograph, Plaintiff personally selected the subject
7 matter, timing, lighting, angle, perspective, depth, lens and camera equipment used
8 to capture the image.

9 16. On May 15, 2020, the Photograph was registered by USCO under
10 Registration No. VA 2-206-865.

11 17. Plaintiff created the Photograph with the intention of it being used
12 commercially and for the purpose of display and/or public distribution.

13 18. Plaintiff published the Photograph by commercially licensing it to
14 Splash Media for the purpose of display and/or public distribution.

15 **B. Defendant's Infringing Activity**

16 19. Defendant is the registered owner of the Website and is responsible for
17 its content.

18 20. Defendant is the operator of the Website and is responsible for its
19 content.

20 21. The Website is a key component of Defendant's popular and lucrative
21 commercial enterprise.

22 22. The Website is monetized in that it contains paid advertisements and,
23 upon information and belief, Defendant profits from these activities.

24 23. On or about April 3, 2020, Defendant displayed the Photograph on the
25 Website as part of an on-line story at URL
26 <https://wearemitu.com/wearemitu/entertainment/everyone-has-thoughts-and->
27 [concerns-about-camila-cabello-and-shawn-mendes-quarantine-walks/](https://wearemitu.com/wearemitu/entertainment/everyone-has-thoughts-and-concerns-about-camila-cabello-and-shawn-mendes-quarantine-walks/). A copy of a
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1 screengrab of the Website including the Photograph is attached hereto as Exhibit 2.

2 24. Without permission or authorization from Plaintiff, Defendant
3 volitionally copied and/or displayed Plaintiff's copyright protected Photograph on
4 the Website.

5 25. Plaintiff first observed and actually discovered the Infringement on
6 May 18, 2020.

7 26. Upon information and belief, the Photograph was copied and displayed
8 by Defendant without license or permission, thereby infringing on Plaintiff's
9 copyrights in and to the Photograph (hereinafter all of the unauthorized uses set forth
10 above are referred to as the "*Infringement*").

11 27. The Infringement includes a URL ("*Uniform Resource Locator*") for a
12 fixed tangible medium of expression that was sufficiently permanent or stable to
13 permit it to be communicated for a period of more than a transitory duration and
14 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

15 28. The Infringement is an exact copy of the vast majority of Plaintiff's
16 original image that was directly copied and displayed by Defendant on the Website.

17 29. Upon information and belief, Defendant takes an active and pervasive
18 role in the content posted on its Website, including, but not limited to copying,
19 posting, selecting, commenting on and/or displaying images including but not
20 limited to Plaintiff's Photograph.

21 30. Upon information and belief, Defendant directly contributes to the
22 content posted on the Website by, *inter alia*, directly employing reporters, authors
23 and editors as its agents, including but not limited to Cristal Mesa who is frequent
24 contributor to the Website and upon information and belief, is compensated for such
25 efforts.

26 31. Upon information and belief, at all material times the Employees were
27 acting within the course and scope of their employment when they posted the
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1 Infringement.

2 32. Upon information and belief, at all material times the Employees were
3 acting within the course and scope of their agency when they posted the
4 Infringement.

5 33. Upon information and belief, the Photograph was willfully and
6 volitionally posted to the Website by Defendant.

7 34. Upon information and belief, Defendant was aware of facts or
8 circumstances from which the determination regarding the Infringement was
9 apparent. Defendant cannot claim that it was not aware of the infringing activities,
10 including the specific Infringement which form the basis of this complaint, since
11 such a claim would amount to only willful blindness to the Infringement on the part
12 of Defendant.

13 35. Upon information and belief, Defendant engaged in the Infringement
14 knowingly and in violation of applicable United States copyright laws.

15 36. Upon information and belief, Defendant has the legal right and ability
16 to control and limit the infringing activities on its Website and exercised and/or had
17 the right and ability to exercise such right.

18 37. Upon information and belief, Defendant monitors the content on its
19 Website.

20 38. Upon information and belief, Defendant has received a financial benefit
21 directly attributable to the Infringement.

22 39. Upon information and belief, the Infringement increased traffic to the
23 Website and, in turn, caused Defendant to realize an increase in its advertising
24 revenues and/or merchandise sales.

25 40. Upon information and belief, a large number of people have viewed the
26 unlawful copies of the Photograph on the Website.

27 41. Upon information and belief, Defendant at all times had the ability to
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1 stop the reproduction and display of Plaintiff's copyrighted material.

2 42. Plaintiff created the Photograph with the intention of it being used
3 commercially and for the purpose of display and/or public distribution.

4 43. Defendant's use of the Photograph harmed the actual market for the
5 Photograph.

6 44. Defendant's use of the Photograph, if widespread, would harm
7 Plaintiff's potential market for the Photograph.

8 45. As a result of Defendant's misconduct, Plaintiff has been substantially
9 harmed.

10 **FIRST COUNT**

11 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

12 46. Plaintiff repeats and incorporates by reference the allegations contained
13 in the preceding paragraphs, as though set forth in full herein.

14 47. The Photograph is an original, creative work in which Plaintiff owns a
15 valid copyright.

16 48. The Photograph is properly registered with the USCO and Plaintiff has
17 complied with all statutory formalities under the Copyright Act and under
18 regulations published by the USCO.

19 49. Plaintiff has not granted Defendant a license or the right to use the
20 Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in
21 the copyright to Defendant.

22 50. Without permission or authorization from Plaintiff and in willful
23 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
24 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
25 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
26 copyrights.

27 51. Defendant's reproduction of the Photograph and display of the
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1 Photograph constitutes willful copyright infringement.

2 52. Upon information and belief, Defendant willfully infringed upon
3 Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
4 Defendant used, published, communicated, posted, publicized, and otherwise held
5 out to the public for commercial benefit, Plaintiff's original and unique Photograph
6 without Plaintiff's consent or authority, by using it on the Website.

7 53. As a result of Defendant's violations of Title 17 of the U.S. Code,
8 Plaintiff is entitled to an award of actual damages and disgorgement of all of
9 Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504
10 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
11 statutory damages against Defendant for each infringement pursuant to 17 U.S.C. §
12 504(c).

13 54. As a result of the Defendant's violations of Title 17 of the U.S. Code,
14 the court in its discretion may allow the recovery of full costs as well as reasonable
15 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

16 55. As a result of Defendant's violations of Title 17 of the U.S. Code,
17 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
18 copyright pursuant to 17 U.S.C. § 502.

19 **JURY DEMAND**

20 56. Plaintiff hereby demands a trial of this action by jury.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

23 That the Court enters a judgment finding that Defendant has infringed on
24 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and
25 therefore award damages and monetary relief as follows:

- 26 a. finding that Defendant infringed Plaintiff's copyright interest in
27 and to the Photograph by copying and displaying it without a
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1 license or consent;

- 2 b. for an award of actual damages and disgorgement of all of
3 Defendant's profits attributable to the infringement as provided
4 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
5 alternative, at Plaintiff's election, an award for statutory damages
6 against each Defendant for each infringement pursuant to 17
7 U.S.C. § 504(c), whichever is larger;
8 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
9 from any infringing use of any of Plaintiff's works;
10 d. for costs of litigation and reasonable attorney's fees against
11 Defendant pursuant to 17 U.S.C. § 505;
12 e. for pre-judgment interest as permitted by law; and
13 f. for any other relief the Court deems just and proper.
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15 DATED: May 18, 2023

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